



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

**STATE WATER CONTROL BOARD ENFORCEMENT ACTION
SPECIAL ORDER BY CONSENT
ISSUED TO
AQUA UTILITIES, INC.
FOR
LAND 'OR UTILITY COMPANY, INC. SEWAGE TREATMENT PLANT
(VPDES PERMIT NO. VA0060887)**

SECTION A: Purpose

This is a Consent Special Order issued under the authority of Va. Code §§ 62.1-44.15(8a) and 10.1-1185 between the State Water Control Board and Aqua Utilities, Inc., regarding the Land 'Or Utility Company, Inc. sewage treatment plant for the purpose of resolving certain violations of the State Water Control Law and Regulations.

SECTION B: Definitions:

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Va. Code" means the Code of Virginia (1950), as amended.
2. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia as described in Va. Code §§ 62.1-44.7 and 10.1-1184.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code §§ 10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality.
5. "Order" means this document, also known as a Consent Special Order.
6. "Aqua Utilities" means Aqua Utilities, Inc., formerly AquaSource Utilities, Inc., a Texas corporation, authorized to do business in Virginia.
7. "Land 'Or Utility" means Land 'Or Utility Company, Inc., a Virginia corporation and a wholly-owned subsidiary of Aqua Utilities, Inc.
8. "STP" or "facility" means the Land 'Or Utility sewage treatment plant.

9. "NVRO" means the Northern Virginia Regional Office of DEQ, located in Woodbridge, Virginia.
10. "Permit" means Virginia Pollution Discharge Elimination System Permit No. VA0060887.

SECTION C: Findings of Fact and Conclusions of Law

1. Aqua Utilities, the permittee, owns and operates the STP through its subsidiary Land 'Or Utility. The STP discharges wastewater to an unnamed tributary of South River in the York River Basin. Discharges of wastewater are the subject of the Permit that was reissued on December 20, 2001, and expires on December 20, 2006.
2. The Board has evidence to indicate that the Aqua Utilities, Inc. has violated VPDES Permit Regulation 9 VAC 25-31-50.A for exceedences of Permit effluent limits for total kjeldahl nitrogen ("TKN") in August 2003, total suspended solids ("TSS") in November 2003, ammonia as nitrogen ("ammonia") in December 2003 and January 2004, and biochemical oxygen demand ("BOD₅") in February 2004. DEQ NVRO issued warning letters and Notices of Violation ("NOV") for those exceedences as follows: NOV No. W2003-10-N-0009 issued October 23, 2003; NOV No. W2004-01-N-0008 issued January 23, 2004; WL No. W2004-03-N-1016 issued March 12, 2004, and WL No. 2004-04-N-1010 on April 7, 2004.
3. The STP was not designed to treat TKN and ammonia. The STP's prior owner upgraded the STP's aeration system pursuant to an Order issued by the Board on March 26, 2003, in an effort to ensure compliance with final permit effluent limits for TKN and ammonia. The upgrade was completed in April 2003, and the STP achieved compliance with final effluent limits in April and May 2003 as required by the Order. The upgraded aeration system improved the STP's performance but was not sufficient to ensure consistent compliance, and the STP began to exceed TKN limits again in June 2003.
4. Shortly after obtaining ownership of the STP, in and around August, 2003, Aqua Utilities employed a consultant to evaluate the STP's condition and recommend needed improvements or upgrades. Aqua Utilities representatives met with DEQ on October 7, 2003. During the meeting, Aqua Utilities outlined plans for ensuring the STP's consistent compliance with present and future Permit requirements by replacing the existing antiquated STP with a new, expanded facility. According to Aqua Utilities, the new facility will be designed to ensure compliance with final permit effluent limits for TKN, ammonia, TSS, and BOD₅. The new facility will also be designed to operate in compliance with metals limits and incorporate denitrification capabilities.
5. Aqua Utilities submitted to DEQ an initial plan and schedule for constructing a new facility on November 26, 2003, and a revised schedule on February 27, 2004. The plan and schedule for constructing the new facility have been incorporated into Appendix A of this

Order. Appendix B of this Order provides interim effluent limits for ammonia, TKN, TSS, ammonia, and BOD₅ until November 15, 2005, when the newly constructed facility is required be on-line and achieving compliance with final Permit effluent limits.

SECTION D: Agreement and Order

Accordingly the Board, by virtue of the authority granted it in Va. Code § 62.1-44.15(8a), orders Aqua Utilities, Inc., and Aqua Utilities, Inc. agrees, to perform the actions described in Appendices A and B of this Order.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of Aqua Utilities, for good cause shown by Aqua Utilities or on its own motion after notice and opportunity to be heard.
2. This Order addresses and resolves those violations specifically identified herein, including those matters addressed in the Warning Letters issued on March 12, and April 7, 2004, and the NOV's issued on October 23, 2003 and January 23, 2004 as described above in item two of Section C. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility as may be authorized by law; or (3) taking subsequent action to enforce the Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.
3. For purposes of this Order and subsequent actions with respect to this Order, Aqua Utilities admits the jurisdictional allegations, but not the factual findings and conclusions of law contained herein.
4. Aqua Utilities declares it has received fair and due process under the Administrative Process Act, Va. Code § 2.2 - 4000 *et seq.*, and the State Water Control Law, and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order.
5. Failure by Aqua Utilities to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.

6. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
7. Aqua Utilities shall be responsible for its failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. Aqua Utilities shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Aqua Utilities shall notify the DEQ Regional Director of NVRO in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order.

Such notice shall set forth:

- a. the reasons for the delay or noncompliance;
- b. the projected duration of any such delay or noncompliance;
- c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
- d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director within 24 hours of learning of any condition above, which Aqua Utilities intends to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

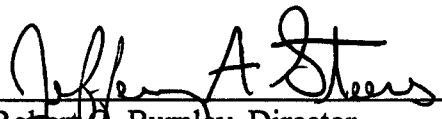
8. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
9. This Order shall become effective upon execution by both the Director or his designee and Aqua Utilities. Notwithstanding the foregoing, Aqua Utilities agrees to be bound by any compliance date, which precedes the effective date of this Order.
11. This Order shall continue in effect until the Director or Board terminates the Order in his

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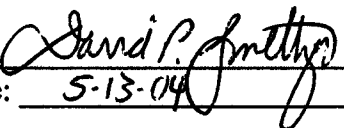
its sole discretion upon 30 days written notice to Aqua Utilities. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Aqua Utilities from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. By its signature below, Aqua Utilities voluntarily agrees to the issuance of this Order.

And it is so ORDERED this day of 21 June, 2004.


Robert W. Burnley, Director
Department of Environmental Quality

Aqua Utilities, Inc. voluntarily agrees to the issuance of this Order.

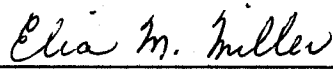
By: 
Date: 5-13-04

Commonwealth of Pennsylvania
County of Delaware

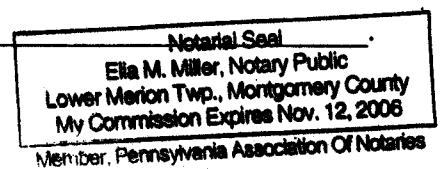
The foregoing document was signed and acknowledged before me this 13th day of

May, 2004 by David P. Smeltzer, who is
(name)

Vice President & Chief Financial Officer for Aqua Utilities, Inc.
(title)


Notary Public

My commission expires: _____



**APPENDIX A
SCHEDULE OF COMPLIANCE**

Aqua Utilities, Inc. shall:

1. By August 15, 2004, submit to DEQ for review and approval plans and specifications for constructing the new, expanded facility;
2. Within 90 days of approval of the plans and specifications by the DEQ, begin construction of the new facility;
3. Within fourteen (14) months of approval of the plans and specifications by the DEQ, complete construction of the new facility in accordance with approved plans and specifications;
4. Within sixty (60) days of completion of construction, achieve compliance with final Permit effluent limits at the new facility, with a proportionate adjustment due to the increased flow capacity at the new facility;
5. Pending completion of the new facility, operate the existing STP in a manner that produces the best quality effluent of which it is capable in order to minimize any additional exceedences of the STP's final or interim effluent limitations and impacts to water quality that may occur while the upgrade is under construction;
6. Continue to conduct biweekly instream monitoring for dissolved oxygen and ammonia as nitrogen until construction of the new facility is completed and submit the monitoring data with the existing STP's monthly discharge monitoring reports;
7. By December 31, 2004 submit to DEQ for review and approval a closure plan for the existing STP; and
8. By June 30 2006, close the existing STP in accordance with the approved Closure Plan required under item seven of this Appendix and submit a closure report documenting that the existing STP has been closed in accordance with the approved closure plan.

APPENDIX B

INTERIM EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

AQUA UTILITIES, INC.

LAND 'OR UTILITY COMPANY, INC. SEWAGE TREATMENT PLANT

During the period beginning with the effective date of this Order and lasting until construction of the new facility is complete in accordance with the schedule provided under items three and four in Appendix A of this Order, Aqua Utilities shall monitor and limit the discharge from outfall 001 at the Facility in accordance with the VPDES Permit No. VA0060887, except as specified below. These interim limits shall retroactively apply, if applicable, as of the first day of the month in which this Order becomes effective. These requirements shall be construed in light of the Board's Permit Regulation.

PARAMETER	DISCHARGE LIMITATIONS					MONITORING REQUIREMENTS		
	<u>Monthly Average</u>		<u>Weekly Average</u>		<u>Minimum</u>	<u>Maximum</u>	<u>Frequency</u>	<u>Sample Type</u>
BOD ₅	10.0 mg/l	NL	N/L	N/L	N/A	N/A	1/W	4H-C
TSS	10.0 mg/l	NL	N/L	N/L	N/A	N/A	1/W	4H-C
TKN (Mar-Oct)	3.0 mg/l	N/L	N/L	N/L	N/A	N/A	1/W	4H-C
Ammonia as Nitrogen (Nov-Feb)	2.2 mg/l	N/A	N/L	N/A	N/A	N/A	1/W	4H-C

N/A = Not Applicable

N/L = No Limit

1/W = Once per week

4H-C = A flow proportional composite sample collected manually or automatically, and discretely or continuously, for the entire discharge of the monitored 4-hour period.